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USDC Environmental, Inc. and Michael G. Gretzmacher. Case 13-CA-34188

March 31, 1997

DECISION AND ORDER

BY CHAIRMAN GOULD AND MEMBERS FOX AND
HIGGINS

Upon a charge and first amended charge filed by the Charging Party, Michael G. Gretzmacher, an individual, on March 28 and July 12, 1996, the General Counsel of the National Labor Relations Board issued a complaint on October 17, 1996, against USDC Environmental, Inc., the Respondent, alleging that it has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Although the Respondent filed an answer to the complaint, it withdrew that answer on February 24, 1997.

On February 28, 1997, the General Counsel filed a Motion for Summary Judgment with the Board. On March 3, 1997, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, the complaint affirmatively notes that unless an answer is filed within 14 days of service, all the allegations in the complaint will be considered admitted. Here, although the Respondent initially did file an answer, the Respondent withdrew its answer to the complaint on February 24, 1997. The Respondent's withdrawal of its answer to the complaint has the same effect as a failure to file an answer, i.e., all allegations in the complaint must be considered to be true. See *Maislin Transport*, 274 NLRB 529 (1985).

Accordingly, in the absence of good cause being shown otherwise, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondent, a corporation, with an office and place of business in Chicago, Illi-

nois, has been engaged in the business of asbestos abatement. During the 1995 calendar year, the Respondent, in conducting its business operations, derived gross revenues in excess of \$1 million. During that same time period, the Respondent performed services for and received revenues in excess of \$50,000 from enterprises within the State of Illinois that are directly engaged in interstate commerce, and purchased and received at its Chicago, Illinois facility products, goods, and materials valued in excess of \$5000 directly from points outside the State of Illinois. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Construction and General Laborers' District Council of Chicago and Vicinity, AFL-CIO (the Union) has been a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

About October 27, 1995, the Respondent interrogated employees as to their union activities and the union activities of other employees, threatened employees with unspecified reprisals for engaging in union activities, and created an impression among its employees that their union activities were under surveillance by the Respondent.

About November 1, 1995, the Respondent discharged and, since that date, failed and refused to reinstate its employee Michael G. Gretzmacher, because he was a member of the Union and engaged in other union and/or protected, concerted activities, and to discourage employees from engaging in such activities.

CONCLUSIONS OF LAW

By the acts and conduct described above, the Respondent has been interfering with, restraining, and coercing employees in the exercise of the rights guaranteed in Section 7 of the Act, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(1) and Section 2(6) and (7) of the Act. Furthermore, by discharging Gretzmacher and failing and refusing to reinstate him, Respondent has also been discriminating in regard to the hire or tenure or terms or conditions of employment of its employees, thereby discouraging membership in a labor organization, and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(3) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, having found that the Respondent has violated Section 8(a)(3) and (1) by discharging Michael G.

Gretzmacher, we shall order the Respondent to offer him full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed, and to make him whole for any loss of earnings and other benefits suffered as a result of the discrimination against him. Backpay shall be computed in accordance with *F. W. Woolworth Co.*, 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987). The Respondent shall also be required to expunge from its files any and all references to the unlawful discharge, and to notify the discriminatee in writing that this has been done.

ORDER

The National Labor Relations Board orders that the Respondent, USDC Environmental, Inc., Chicago, Illinois, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Interrogating employees as to their union activities or the union activities of other employees.

(b) Threatening employees with unspecified reprisals for engaging in union activities.

(c) Creating the impression among its employees that their union activities are under surveillance.

(d) Discharging or failing or refusing to reinstate its employees, because they are members of Construction and General Laborers' District Council of Chicago and Vicinity, AFL-CIO, or engage in other union and/or protected, concerted activities, or to discourage employees from engaging in such activities.

(e) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) Within 14 days from the date of this Order, offer Michael G. Gretzmacher full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

(b) Make Michael G. Gretzmacher whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against him in the manner set forth in the remedy section of this decision.

(c) Within 14 days from the date of this Order, expunge from its files any and all references to the unlawful discharge, and, within 3 days thereafter, notify the discriminatees in writing that this has been done and that the unlawful discharge will not be used against him in any way.

(d) Preserve and, within 14 days of a request, make available to the Board or its agents for examination

and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(e) Within 14 days after service by the Region, post at its facility in Chicago, Illinois, copies of the attached notice marked "Appendix."¹ Copies of the notice, on forms provided by the Regional Director for Region 13, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Respondent has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current employees and former employees employed by the Respondent at any time since March 28, 1996.

(f) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. March 31, 1997

William B. Gould IV, Chairman

Sarah M. Fox, Member

John E. Higgins, Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

¹ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT interrogate employees as to their union activities or the union activities of other employees.

WE WILL NOT threaten employees with unspecified reprisals for engaging in union activities.

WE WILL NOT create the impression among our employees that their union activities are under surveillance.

WE WILL NOT discharge or fail or refuse to reinstate our employees, because they are members of Construction and General Laborers' District Council of Chicago and Vicinity, AFL-CIO, or engage in other union and/or protected, concerted activities, or to discourage employees from engaging in such activities.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, within 14 days from the date of this Order, offer Michael G. Gretzmacher full reinstatement to his former job or, if that job no longer exists, to a substantially equivalent position, without prejudice to his seniority or any other rights or privileges previously enjoyed.

WE WILL make Michael G. Gretzmacher whole, with interest, for any loss of earnings and other benefits suffered as a result of the discrimination against him.

WE WILL, within 14 days from the date of this Order, expunge from our files any and all references to the unlawful discharge, and, within 3 days thereafter, notify Michael G. Gretzmacher, in writing, that this has been done and that the unlawful discharge will not be used against him in any way.

USDC ENVIRONMENTAL, INC.